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THE 1984 ANNIVERSARY OF THE CONSTITUTION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

THE DOCTRINE OF FEDERALISM WITHIN THE CONSTITUTION

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THE 1984 ANNIVERSARY OF THE CONSTITUTION

MONDAY, SEPTEMBER 17, 1984

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in the Senate Caucus Room, Russell Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senator Thurmond.

Staff present: Stephen J. Markman, chief counsel; Randall Rader, general counsel; Deborah Dahl, clerk; and Dick Bowman, counsel, Full Committee.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. If we could, we would like to have order. Please take your seats and join us in the audience. We would love to have you here. This is a very important hearing.

We now call the Subcommittee on the Constitution to order.

On Monday the 14th of May, 1787, and in the eleventh year of the independence of the United States of America, at the State House in the City of Philadelphia—in virtue of appointments from their respective States, sundry deputies to the Federal Convention appeared—but a majority of the States not being represented, the members present adjourned from day to day until Friday, the 25th of the said month.

With these words, the journal of the Constitutional Convention begins its account of the remarkable 16 weeks of work done by 55 men, 197 years ago.

The first act of the Convention on May 25 was to elect unanimously as Chairman the man referred to affectionately in Madison's original journal of the proceedings as "the General," George Washington.

The last act of the Convention on September 17 was the signing by 39 delegates of the document which has formed the foundation of our liberties for nearly two centuries. Many have striven to describe with suitable majesty the forces and philosophies that gave rise to the Constitution. It seems to me, however, that Abraham Lincoln, speaking in 1860 when the Constitution withstood its greatest test, captured fittingly the motivating principle of the document:

Prosperity is not the result of accident. It has a philosophical cause. Without the Constitution and the Union, we could not have attained the result. Yet there is something back of these entwining itself more closely about the human heart. That

something is the principle of "liberty to all"—the principle that clears the path for all—gives hope to all—and, by consequence, enterprise and industry to all.

The liberties preserved by our Constitution are, indeed, the source of our prosperity and hope for the future. Accordingly, it is appropriate to take time today, the 197th anniversary of the signing of the Constitution, to look to the future. For this reason, the Constitution Subcommittee for the second year is pleased to welcome as witnesses four students who have participated in an essay contest on the subject of the doctrine of federalism within the Constitution.

These outstanding high school students, selected from among many others in four States, will share with us their winning essays. Without question, the future of the Constitution lies in the hands of youthful leaders such as these who will testify today.

Since the Constitution is shaped by the views of each successive generation, this hearing will provide us with a picture of the future of that document in the hands of the rising generation.

So we are very, very grateful to be able to hold this hearing today and look forward to it.

We also feel very honored to have the chairman of the Judiciary Committee, who can only stay with us a short time this morning, but who has been here almost as long as Senator Randolph, and certainly has had a dramatic impact on this whole country, Senator Strom Thurmond.

We are so happy to have you with us, Senator, and we will be glad to take your comments at this time.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. Thank you very much.

Mr. Chairman, I just want to say that the United States has the greatest form of government that modern man has ever conceived. This form of government results from the Constitution we have.

The forefathers who wrote this Constitution had in mind mainly two principles. The first was that no individual would ever have too much power. As Thomas Jefferson said, you cannot trust a man with power. He said you have got to chain him down to his Constitution. So they decided to write a form of government in which we would have three branches and the power would become diverse. The Congress would make the laws; the executive branch, headed by the President, would administer the law; and the court judicial system, headed by the Supreme Court, would interpret the law. In that way, each is a check and a balance on the other.

The second big principle was, and this is something that very few people seem to understand, that the States reserved all the power that they did not delegate to the Union. The Union, the Federal Government, was to be a government of limited powers, and they are enumerated chiefly in article I, section 8, of the Constitution: The power of the Federal Government—interstate commerce, foreign affairs, defense, custom duties, and so forth. That is the only power the Federal Government has today except the amendments to the Constitution since the adoption of the Constitution.

So in that way, they wanted to retain the sovereignty of the States. Patrick Henry was afraid that the Federal Government eventually would increase in size and divide the States and leave them nothing more than territories, and he refused to sign it.

They went ahead with George Washington as chairman there, and they did sign it, and it is a great document, and if we just adhere to it, we can still retain throughout the world the finest form of government for the governing of a people.

I am very proud of this great work of the Constitution. I want to commend the able and distinguished chairman of this Subcommittee on the Constitution for holding this hearing and for the great work he is doing in preserving the Constitution. A lot of matters come before the Congress which are noble and which are well, but the Federal Government does not have jurisdiction to go into them. And if we do go into them, there should be a constitutional amendment giving them the power to do it. I want to commend the chairman for trying to restrict the Federal Government to the powers given it under the Constitution. As long as we have 50 strong States, I do not think we will ever have a dictator. But if we shift power more and more to the Federal level, taking it away from the people and the States, then a dictator in this country could arise. Therefore, I am proud of the work of this subcommittee and what it is doing and again commend the able chairman.

Senator HATCH. Well, thank you, Mr. Chairman. We appreciate having you here, and I am most gratified by your kind comments about this subcommittee. We have worked diligently to accomplish what the distinguished chairman is discussing, but we have encountered a constant onslaught from certain people in the Congress who believe that only Washington has all the answers. Frankly, Washington has a very important role to play, but it does not have all the answers.

We are happy to begin our hearing this morning by calling upon our Utah first-place winner, Miss Sloane Kathryn Ivancich.

Sloane, we will ask you to take the witness chair. I might add that Sloane received this great honor as first-place winner in a statewide contest, and the judges of that contest were Representative Donna Dahl, Dr. W. Cleon Skousen, Dr. R.J. Snow of the University of Utah, and Representative James Witucke. In Utah, a balanced panel of two Republicans and two Democrats made this determination.

The second-place winner was Miss Clare Lawrence, who is age 16; the third-place winner was Mr. Jack Edward Ottaway. Clare was from Judge Memorial High School, and Jack Edward Ottaway is a senior at Weber High School.

The honorable mentions were Miss Cheryl Fenema, who is a junior at Cyprus High School, and Mr. Todd Mulville, a junior at Uena High School.

This competition featured very strong competition. I called each of these young people and congratulated them for what they had done.

Now, Sloane is a senior at Brighton High School, and her parents are John and Nell Ivancich. We are very, very happy to have you here, Sloane. You may just relax. We are interested in having you present your essay to us today, as well as those of the other win-

ners that we have invited here before this subcommittee. This essay is being recorded, and I might add, of course, that it will be placed in the Congressional Record, as will all of these essays. So it is a real honor to have you here, and I think it is an honor for you to be here. So we are grateful to take your testimony at this time.

STATEMENT OF SLOANE KATHRYN IVANCICH, SALT LAKE CITY, UT

Miss IVANCICH. Thank you, Senator Hatch, Senator Thurmond, and other members of the Constitution Subcommittee.

Following the Revolutionary War, the people of America needed to form their own system of government. Because of the lack of freedom the colonies had under the rule of Great Britain, the people were determined to ensure the rights of the individual States. Hence, the people would not allow the new government to be a unitary one. Yet, it was soon realized that a Confederation of Sovereign States and a National Government without power, the Government under the Articles of Confederation, was inadequate to run a country. As a result, a federal system of government was established, and the doctrine of federalism emerged.

Federalism is the distribution of political power between two independent spheres of government: a National Government, with authority over the entire country, and many separate local governments.[1] Or, as political theorist K.C. Wheare once suggested, "* * * Federalism is a system in which two levels of government operate within the same geographical limits and neither has the power to destroy the other." [2]

Although federalism is not a system without flaws, it has remained a vital part of our government and is perpetuated by the beliefs and institutions inherent to American society.

The U.S. Constitution has helped to form the basis for maintaining federalism in the American governmental structure. Although it is not directly stated in the Constitution that the United States is based on a federal system of government, there are three key clauses in the Constitution that have determined the character of American federalism.[3]

The first of these clauses is the 10th amendment which helps to draw the distinction between what the States can and cannot do. This amendment states that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people." [4] In adding this amendment to the Constitution, it was clarified that all powers not enumerated to the National Government would be left to the States.

The second of these clauses is the "supremacy" clause. It is written into article VI of the Constitution and begins, "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made,

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[1] Robert Carr, Marver Bernstein, Donald Morrison, and Joseph McLean, "American Democracy: In Theory and Practice" (New York: Holt, Rinehart, and Winston, 1960), p. 74.

[2] Kenneth C. Wheare, "Federal Government" in John P. Roche, "Constitutional Law," "International Encyclopedia of the Social Sciences," 1968 ed.

[3] Carr, Bernstein, Morrison, and McLean, p. 75.

[4] Ibid., p. 75.

under the authority of the United States, shall be made the supreme law of the land. * * *"[5] Thus, if a State constitution or law conflicts with the U.S. Constitution, a national law or treaty, the national ordinance prevails.

The third key clause in the Constitution that determines the system of federalism in America is the "necessary and proper" clause. It is the 18th grant of power to Congress and is in section 8 of article I and gives Congress the power to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof."[6] This clause, also known as the "elastic clause," enables the National Government to stretch its powers beyond the enumerated powers. This interpretation of the clause was affirmed by the Supreme Court in the 1819 decision of *McCulloch* v. *Maryland,* in which the Court stated, "* * * We think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people."[7]

Thus, in three key clauses of the Constitution, America's system of federalism is outlined. Moreover, it has been sustained by the traditional strength of the U.S. Constitution.

However, because the Constitution does not set absolute limits to the power of the National Government, it is often difficult to define the boundaries between State and National powers. It is thereby necessary to find an arbitrator to solve the conflicts between the State governments and the National Government. This arbitrator was found in the Supreme Court. Without it, the Federal Government would not last. As author Bernard Schwartz points out in his book "The Reins of Power": "The high bench is the bolt that holds the federal machinery together. Draw it out, and there would be no real federal system, but only a moral union between the states."[8]

Yet, even the Supreme Court cannot always determine the exact boundary between what should fall under the authority of the States and what should fall under the authority of the National Government. One example of this is the difficulty in determining what is interstate commerce and what is intrastate commerce. By decree of the Constitution, the National Government has the right to regulate interstate commerce. But it is extremely difficult to determine when intrastate commerce becomes interstate commerce. In cases such as this, it is necessary for both levels of government to compromise.[9]

Not everyone believes that federalism has actually remained a vital part of our Government. Some people feel that federalism no longer exists because the National Government has, in a sense, swallowed up much of the power of the States. These people feel

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[5] Ibid., p. 76.
[6] Carr, Bernstein, Morrison, and McLean, p. 77.
[7] Petter Woll, "American Government: Readings and Cases" (Boston: Little, Brown & Co., 1981), pp. 86-87.
[8] Schwartz (New York: Hill and Wang, 1963), p. 200.
[9] Carr, Bernstein, Morrison, and McLean, p. 97.

that federalism exists only in theory and that it is no longer in practice.[10] However, the increases in national power are based on the Nation's needs at a particular time. As the first Hoover Commission once said, "Emphasis shifts from generation to generation as the American people fashion their government to meet the needs of changing times and changing conditions."[11] For example, during President Franklin D. Roosevelt's administration, the country was faced with a severe economic depression. Roosevelt's New Deal, which shifted much of the power from the States to the National Government, was an effort to alleviate the problems caused by the poor economy. Thus, federalism allows for a national or centralized government to deal with nationwide problems. And that does not mean that the States are actually losing all of their powers.

Furthermore, the National Government exercises its increased powers through the State governments, still allowing the States to retain much of their power.[12] The welfare system, the interstate highway system, city improvement projects, and grant-in-aid programs are all examples in which the National Government does not exactly govern as much as it attempts to encourage the States to govern in agreement with national plans.[13]

In addition, the people are unwilling to allow the National Government to destroy the power of the State and local levels. Not only do they fear too strong a national government, but they also still depend on a largely localized government because of the differences between various localities.[14] The needs of one community are not always identical to the needs of another community. States can maintain their independence because of a commitment by Americans "to the idea of local self-government and on the fact that Congress consists of persons who are elected by and responsive to local constituencies."[15]

Hence, the people of America play a large role in keeping the federal system working. As Alexis de Tocqueville stated after observing American federalism in 1831:

> I have never been more struck by the good sense and the practical judgement of the Americans than in the manner in which they elude the numberless difficulties resulting from their federal constitution.[16]

Tocqueville again praised the American people when he stated:

> The accidental defects of the federal system which originate in the laws may be corrected by the skill of the legislator, but there are evils inherent in the system which cannot be remedied by any effort. The people must therefore find in themselves the strength necessary to bear the natural imperfections of their government."[17]

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[10] Andrew C. McLaughlin, "A Constitutional History of the United States" (New York: Appleton-Century Co., Inc., 1963), p. 789.

[11] Commission on Organization of the Excecutive Branch of the Government, "Overseas Administration, Federal-State Relations, Federal Research," in Carr, Bernstein, and McLean, p. 111.

[12] James Q. Wilson, "American Government: Institutions and Policies" (Lexington: D.C. Heath & Co., 1983), p. 45.

[13] Ibid., pp. 45–46.

[14] Felix Morley, "Freedom and Federalism" (Chicago: Henry Regnery Co., 1959), p. 234–235.

[15] James Q. Wilson, p. 45.

[16] "Democracy in America: The Federal Constitution," quoted by Woll, p. 74.

[17] Ibid., p. 31.

According to Tocqueville, federalism works in the United States, even though it often fails in other countries, because of the good sense, pragmatism, and tolerance of the American people.

The country of Brazil, for example, tried to imitate the U.S. federal system, but it failed for two major reasons. First, the principles of federalism were foreign to Brazil and were never adequately combined with the nation's traditions.[18] However, the situation is different in the United States. The federal system was developed by the American people to suit their own needs; it was not a copy of another country's government.

Second, the States within Brazil were too dissimilar.[19] There were only a few States in Brazil with the financial resources that could support a modern government. The rest of the States were, to a large degree, backward. Thus, in Brazil, there could not be a balance between the States and the Central Government because only a few States had the means to support the Central Government.[20]

In contrast is the United States. As Alexis de Tocqueville points out, "The circumstance which makes it easy to maintain a federal government in America is not only that the States have similar interests, a common origin, and a common language, but they have also arrived at the same stage of civilization."[21]

Thus, system of federalism has been sustained in the American society. The factors that have added to its perpetuation are many. The traditional strength of the U.S. Constitution is a vital force in maintaining federalism. In addition, the American people themselves have made a contribution in their determination to preserve the federal system. And, last, the grassroots structure of the American society has added to the perpetuation of federalism.

Thank you.

Senator HATCH. Well, thank you. I think that was a tremendous essay. Naturally, I am particularly proud that you come from Utah and have gone through stiff competition to get to this particular point. So, I really compliment you.

In your opinion, what would be the most important principle that you think the Constitution stands for, based on the studies that you made with regard to the Constitution?

Miss IVANCICH. I think the most important principle that federalism stands for is to maintain a balance between the States and the National Government. If we were to have all the power just solely on the State level, then I feel we would have problems like we had before the U.S. Constitution was adopted under the Articles of Confederation. There would just be no unity in the United States.

I also feel there would be a problem with having a solely National Government, because as Senator Thurmond stated, it would in a sense equal a dictatorship. That is why it is necessary to keep such a balance.

Senator HATCH. Well, that is thoughtful testimony. I wish some of our constitutional experts in the country would be as articulate

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[18] Leslie Lipson, "The Great Issues of Politics" (New Jersey: Prentice-Hall, Inc., 1981), p. 302.
[19] Ibid., p. 302.
[20] Ibid.
[21] "Democracy in America: The Federal Constitution," quoted by Woll, p. 74.

and as straightforward as you are with regard to that great principle.

Senator Thurmond.

The CHAIRMAN. It would not even hurt if some of the Congressmen felt the way you do.

Senator HATCH. Senator Thurmond always brings it down to where it really should be. [Laughter.]

The CHAIRMAN. I just want to congratulate you.

Miss IVANCICH. Thank you.

The CHAIRMAN. I am very proud of you, and I am proud of the students of America like you, who have studied the Constitution, because we think it says what it means and means what it says. Unfortunately, it has been so misinterpreted. Often people feel that if they have a good idea or a noble cause, that the Congress should act on it, or the Supreme Court should act on it, or the President should act on it without regard for the balance of powers or federalism. And that is a great mistake. If we just abide by the Constitution, no nation in the world can ever compete with us in any way, shape, or form.

Congratulations.

Miss IVANCICH. Thank you.

Senator HATCH. I want to congratulate you, too. And I am really happy to have Senator Thurmond here to hear your essay, because I do not know of anybody who has worked harder to preserve the Constitution than Senator Thurmond—or anybody I respect more. I have served with him on the Judiciary and on the Labor Committee for as long as I have been here. I have watched this man, what he has done, what he stands for, and what he has meant to this country. Those observations have caused me to respect him greatly.

Now, I challenge you to continue your study of the Constitution. I understand you want to go to law school, so you will be able to do that. And I believe that as you do that, one of these days, you may sit here, and you may also sit in Senator Thurmond's seat, where you would be fighting to preserve the Constitution so that we can have another 200 years of great government and great constitutional principle.

I hope this has been, if not a beginning, certainly, an extension of your study of the Constitution so that you will continue to contribute in these ways. I am very proud of you, as I am of all the young people who will testify before this committee today. I just want you to know how grateful we are that you have participated and that you have been here for this testimony, and I hope you profit from the whole experience here, Sloane.

Miss IVANCICH. I have, very much.

Senator HATCH. Thank you for being here.

The CHAIRMAN. After you finish law school, I am sure Senator Hatch will give you a job as a lawyer in his office or on one of his committees—if he does not, I will. [Laughter.]

Senator HATCH. I think you can count on that.

It was nice to have you here, and we appreciate your representing our great State of Utah.

Our next authority on the Constitution, who has won the essay contest in her home State of Iowa, is Karen Elizabeth Forrester.

Karen, we would like to have you come to the witness chair at this time.

Karen lives in Des Moines, IA. Her parents are Richard M. Forrester and Lois M. Forrester of Des Moines, IA. She is a senior at Hoover High School in Des Moines, and expects to graduate in May 1985.

So we are very pleased to welcome you, as well. I will mention that Senator Grassley is detained in another committee and wishes that he could be here, because he is a member of this subcommittee, but he knows that we are going to receive you well. He has asked us to make sure that this is a pleasant and rewarding experience for you.

I will only ask you maybe four or five questions. So, you relax, and we are happy to take your testimony at this time, Karen.

STATEMENT OF KAREN ELIZABETH FORRESTER, DES MOINES, IA

Miss FORRESTER. One fact that very few people realize is that the Government of the United States is a very old form of government. Since we are a young nation, it seems surprising that our Constitution is older than those of the governments of very old nations in Europe and Asia. Perhaps the reason that the Constitution has continued to serve its people so well and has been used by many other countries as a guide for the formation of their own governments is the flexibility in its doctrine of federalism.

When ratified in 1788, the Constitution was a combination of two opposite political philosophies. Alexander Hamilton's supporters wanted a strong central government ruled by the better educated and wealthier members of society. The American people, however, would not tolerate a government that resembled the tyrannical monarchy from which they had just escaped. Thomas Jefferson's supporters wanted a weaker central government with strong State governments ruled by the common people. At that time in our history, however, the American people needed a government to unite them. The failure of the Articles of Confederation proved that the people of the United States were not yet mature or knowledgeable enough for such unrestricted self-government. The result of the Constitutional Convention was a federalistic government that combined both Hamilton's and Jefferson's philosophies.

It was Benjamin Franklin who persuaded the representatives to the Constitutional Convention to accept what most of them thought was an imperfect form of government. He stated that there is no such thing as a perfect government. He warned them that all governments eventually end in despotism when the people become so corrupted as to need a despotic government. Because all people possess prejudices, passions, and errors of opinion, a perfect government cannot be produced by a group of people, no matter how wise they might be. However, he thought that the Constitution they had before them was as close to perfection as possible. "Thus, I consent, sir," said Benjamin Franklin in his speech to the Convention of 1787, "to this Constitution, because I expect no better, and because I am not sure that it is not the best."

The Federal Government was created to unify the States, to regulate interstate commerce, and to represent the country as a

whole. The wording in the Constitution concerning the powers of the Federal Government seems to be rather vaguely stated. This flexibility built into the Constitution encourages debate among people with varying opinions. Debate creates an opportunity for all people to be represented, all ideas to be considered, and the most appropriate action for the particular situation to be taken. A choice between a liberal action or a conservative action, depending upon the situation, protects the Government against unnecessary uprisings, rebellions, and disorder. A more rigid form of Government might not be able to adjust to an emergency; a more pliable Government might not insure the rights of all the people.

The strength of the Federal Government has been periodically tested. In 1832, the Columbian Convention declared a Federal tariff null and void within the borders of South Carolina. It called upon the South Carolina Legislature to make necessary military preparations and threatened that South Carolina would secede if Washington used force to collect the customs. This enraged President Jackson, and he began preparing a sizable army. A violent conflict was avoided, however, when the U.S. Congress passed the compromise tariff to pacify the South Carolinians and, as a face-saving device for the President, also passed the force bill, which authorized the President to use military force if necessary to collect Federal tariff duties.

The next test of the Federal authority was the Civil War. The major issue at the beginning of the war was not slavery, but States' rights versus the Federal Government. When the South was beaten, so was the argument for States' rights. Since then, the Federal Government has grown more powerful. There have been some Presidents who have attempted to slow down the growth of the central Government, but since the Civil War there has been no real champion for States' rights.

After the Civil War, a strong central Government was needed to hold the country together. It continued to grow as Americans held on to the belief that since the larger Government was successful then, it would be in the future. The belief was reinforced during the Great Depression. President Franklin Roosevelt's New Deal Acts greatly increased the size and power of the executive branch of Government.

During the Depression, Congress was in just as great a state of panic as the people were. It was ready to follow whatever lead the President took. Some of the laws passed by Congress early in the Depression delegated legislative authority to the Chief Executive. For the first time, the Federal Government intervened in State and local affairs. The Government created jobs, helped farmers meet their mortgages, and created the Home Owner's Loan Corporation. The Federal Government even put restrictions on business to aid labor. During the Depression, a strong Federal Government was needed to preserve the rights of the people and to provide for the general welfare. The President did provide relief to the suffering people so it was assumed that the only way to run the country efficiently was to have a strong central Government.

In the face of many emergencies, the flexibility of the U.S. Constitution has enabled the Government to act promptly and efficiently while avoiding a needless revolution. It has been a general

assumption, however, that the Government would relinquish its emergency powers after the emergency has passed.

When the argument for States' rights was abandoned after the Civil War, part of the flexibility of our Government was also abandoned. Before the Civil War, there was an alternative to increasing the influence of the Federal Government when a new problem arose. Responsibilities could even be given to the individual States. With the growth of the Federal Government came inefficiency. Many things just seemed to get lost in the oversized bureaucracy. Quality of services also went down.

When it is up to a community to directly support their own public services and schools, they put more care into their jobs. People become more thrifty when they are handling their own money. The small community understands its needs better than an outsider does. The needs of a small town are obviously different from those of a big city. The Federal Government, however, must generalize its programs for each town and city because it must support so many.

It is the flexibility of our Constitution that has enabled this country and this Government to endure so long. When a very strong central government, like the one Alexander Hamilton advocated, is needed, it can be supplied. When a freer and more democratic form of government, like that which Thomas Jefferson supported, is needed, it can be supplied. Our Constitution is unique in that it can easily adjust to the needs of the time and to different national situations. Though it is not a perfect Government, it is a good one. As long as the citizens of this country remain knowledgeable of its content and purposes and are dedicated to the democratic principles which it was designed to preserve, this federalistic country will not only endure; it will continue to improve.

Thank you.

[The prepared statement of Miss Forrester follows:]

Prepared Statement of Karen Elizabeth Forrester

One fact that very few people realize is that the government of the United States is a very old form of government. Since we are a young nation, it seems surprising that our constituition is older than those of the governments of very old nations in Europe and Asia. Perhaps the reason that the constition has continued to serve its people so well and has been used by many other countries as a guide for the formation of their own governments is the flexibility in doctrine of federalism.

When ratified in 1788, the constitution was a combination of two opposite political philosophies. Alexander Hamilton's supporters wanted a strong central government ruled by the better educated and wealthier members of society. The American people, however, would not tolerate a government that resembled the tyranical monarchy from which they had just escaped. Thomas Jefferson's supporters wanted a weaker central government with strong state governments ruled by the common people. At that time in our history, however, the American people needed a government to unite them. The failure of the Articles of Confederation proved that the people of the United States were not yet mature of knowledgeable enough for such unrestricted self government. The result of the Constitutional Convention was a federalistic government that combined both Hamilton's and Jefferson's philosophies.

It was Benjamin Franklin who persuaded the representatives to the Constitutional Convention to accept what most of them thought was an imperfect form of government. He stated that there is no such thing as a perfect government. He warned them that all governments eventually end in despotism when the people become so corrupted as to need a despotic government. Because all people possess prejudices, passions, and errors of opinion, a perfect government can not be produced by a group of people no matter how wise they might be.

However, he thought that the constitution they had before them was as close to perfection as possible. "Thus I consent, Sir," said Benjamin Franklin in his speech to the convention of 1787, "to this constitution, because I expect no better, and because I am not sure that it is not the best."

The federal government was created to unify the states, to regulate interstate commerce, and to represent the country as a whole. The wording in the constitution concerning the powers of the federal government seems to be rather vaguely stated. This flexibility built into the constitution encourages debate amoung people with varying opinions. Debate creates an opportunity for all people to be represented, all ideas to be considered, and the most appropriate action for the particular situation to be taken. A choice between a liberal action or a conservative action, depending upon the situation, protects the government against unnecessary uprisings, rebellions and disorder. A more rigid form of government might not be able to adjust to an emergency; a more pliable government might not insure the rights of all the people.

The strength of the federal government has been periodically tested. In 1832 the Columbian Convention declared a federal tariff null and void within the borders of South Carolina. It called upon the South Carolina legislature to make necessary military preparations and threatened that South Carolina would sucede if Washington used force to collect the customs. This enraged President (General) Jackson and he began preparing a sizable army. A violent conflict was avoided, however, when the United States Congress passed the Compromise Tariff to pacify the South Carolinians and, as a face-saving device for the president, also passed the Force Bill which authorized the president to use military force if necessary to collect federal tariff duties.

The next test of the federal authority was the Civil War.

The major issue at the beginning of the war was not slavery, but states rights versus the federal government. When the South was beaten, so was the argument for states rights. Since then the federal government has grown more powerful. There have been some presidents who have attempted to slow down the growth of the central government, but since the Civil War there has been no real champion for states rights.

After the Civil War a strong central government was needed to hold the country together. It continued to grow as Americans held on to the belief that since a larger government was successful then, it would be in the future. The belief was reinforced during the Great Depression. President Franklin Roosevelt's New Deal Acts greatly increased the size and power of the executive branch of government. During the depression congress was in just as great a state of panic as the people were. It was ready to follow whatever lead the president took. Some of the laws passed by congress early in the depression delegated legislative authority to the chief executive. For the first time the federal government intervened in state and local affairs. The government created jobs, helped farmers meet their mortgages and created the Home Owner's Loan Corporation. The federal government even put restrictions on business to aid labor. During the depression a strong federal government was needed to preserve the rights of the people and to provide for the general welfare. The president did provide relief to the suffering people so it was assumed that the only way to run the country effeciently was to have a strong central government.

In the face of many emergencies the flexibility of the United States Constitution has enabled the government to act promptly and efficiently while avoiding a needless revolution. It has been the general assumption, however, that the government would relinquish its emergency powers after the emergency has passed.

When the argument for states rights was abandoned after the Civil War, part of the flexibility of our government was also abandoned. Before the Civil War there was an alternative to increasing the influence of the federal government when a new problem arose. Responsibilities could even be given to the individual states. With the growth of the federal government came inefficiency. Many things just seemed to get lost in the oversized bureaucracy. Quality of services also went down.

When it is up to a community to directly support their own public services and schools, they put more care into their job. People become more thrifty when they are handling their own money. The small community understands its needs better than an outsider does. The needs of a small town are obviously different from those of a big city. The federal government, however, must generalize its programs for each town and city because it must support so many.

As time passes America changes. In the past a strong central government was needed. Now, however, America is growing rapidly. It is growing in population and is becoming more mature. The federal government can no longer efficiently control everything, nor should it try. People are now better educated and better informed than they were during Hamilton's time. The type of government he proposed was necessary to hold the states together until they matured. The federal government is still needed to preserve national unity and coordination and to provide national defense, but affairs within a state should usually be left to local governments.

President Reagan has now proposed what he calls a "new federalism." Under his plan the federal government would take care of medical benefits while welfare and thirty-five other programs would be turned over to the state governments. According to R. C. Wade of the New York Times, the "... new federalism will insure these programs will be more responsive to both the people they are meant to help and the people who

pay for them." It is also the opinion of the Reagan administration that more people will participate in fundamental decisions since these decisions will have an immediate effect on their community.

"The President has been more successful in bringing the bureaucracy under control than any other president," declared White House personnel chief E. Pedleton James. Besides the reduction in federal services there has been some reduction in personnel. In 1981 roughly 43,000 nondefense jobs were cut with 75,000 more cuts proposed.

During the last few years the suburbs have been growing immensely. Because most federal policies favor urban centers, suburbanites want decentralization in the government. Sometimes their property taxes and health and welfare costs deplete one half of their county's budget, yet they receive very little federal aid. If more control were given to the local governments, this disproportionate aid could be leveled. As a result perhaps fewer people would move to urban centers just to receive government services and welfare, and those in the suburbs would be able and willing to care for their own residents.

It is the flexibility of our constitution that has enabled this country and this government to endure so long. When a very strong central government like the one Alexander Hamilton advocated is needed, it can be supplied. When a freer and more democratic form of government like that which Thomas Jefferson supported is needed, it can be supplied. Our constitution is unique in that it can easily adjust to the needs of the times and to different national situations. Though it is not a perfect government, it is a good one. As long as the citizens of this country remain knowledgeable of its contents and purposes and are dedicated to the democratic principles which it was designed to preserve, this federalistic country will not only endure, but will continue to improve.

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Senator HATCH. Well, thank you. That was very good. I appreciate having that testimony here today.

Let me ask you a question. Since you are testifying before Congress, what advice do you have to assist this body to help to ensure that the Constitution will last another 197 years?

Miss FORRESTER. Congress should keep its constituents aware of what is going on, try to get them to vote, help people to be aware, and try to represent them as best you can.

Senator HATCH. That is valuable advice. We will try to pass that along to all Members of Congress. I think we should pay attention to what you young people are telling us today.

We appreciate having you here, and we really appreciate your excellent essay and your participation in this whole system.

Furthermore, we are glad to have you before the U.S. Senate.

Miss FORRESTER. Thank you. I am glad to be here, too.

Senator HATCH. Thank you. Good to have you here.

Next, we will hear from Miss Nanci Jean Bandes, from Scottsdale, AZ. She presently is a student at Arizona State University in Tempe, AZ. She is majoring in finance, and she graduated from Saguaro High School in Phoenix in 1984. Her parents are Kay Lupke and Willard Bandes.

So at this time, we will call Miss Nanci Jean to the witness chair. We welcome you to the committee and look forward to taking your testimony at this time. You are our only college student right now, and we are really happy to have you here.

STATEMENT OF NANCI JEAN BANDES, SCOTTSDALE, AZ

Ms. BANDES. Thank you very much.

Senator HATCH. Could I interrupt you just 1 second, Nanci?

Ms. BANDES. Sure.

Senator HATCH. I want to apologize for Senator DeConcini. He generally always comes to these hearings, but he has been unavoidably kept out of town, as I understand it, or he would be here. He was really concerned about it and wanted me to pass that on to you, OK?

Ms. BANDES. That is fine. Thank you.

"An indestructible Union, composed of indestructible States," as given by the Supreme Court Justices in the case of *Texas* v. *White,* 1869, this definition represents the true essence of American federalism itself. Federalism has had the most impact on our democracy in the United States and is the most important concept of American governmental organization today.

"American federalism is a form of political organization in which the exercise of power is divided between two levels of government, each having the same citizen body." These powers of government are divided on a constitutional basis and are divided between a central or national government and regional units or States. Both governments have authority, though limited, to act in ways which directly affect the people of the governed area.

Federalism is unique in that is permits local action in areas of local concern, yet also provides for the strength and power that comes from a union of separate entities. New Jersey, for example, gives bus transportation to private as well as public school students, while other States may not. Other examples are Nebraska's unique unicameral legislature and Nevada's legalized gambling.

While permitting variance in local concerns, federalism also, however, provides unity and strength in national concerns, such as a natural disaster or a crisis in a particular State, when all the resources of the entire country are available for any necessary aid.

A primary principle of American federalism is that "the national government would use its superior resources to initiate and support national programs principally administered by the States and localities." The sharing that occurs between national and State governments has a great effect on the lives of every American citizen.

Like all governments, that of the United States began of necessity. The social, economic, and political problems of the 1780's proved the need for a stronger central Government than that of the weak Congress under the Articles of Confederation. Subject to many strong limitations on its powers, Congress could enforce no decision, and in many matters, including amendment, the consent of every State was required. Furthermore, before the States combined, the charters of the colonies defining their governments were radically different. In both war and peace, the people of the young Nation could neither conduct their own affairs nor foreign relations. It was federalism that was needed to bring the country together in unity and strength.

In initiating a Federal system of Government, the Americans had the advantage of working with a modern society with no traditional hierarchies and being relatively isolated from the king and his power. The three major difficulties they did encounter in unifying the States, however, were unifying a society with equality and sharing of power; dissolving the conflict between local autonomy and the need for a strong central Government, and resolving the

problem of executive leadership and succession, which was not solved until the initiation of the elected Presidency. By solving these problems, the Americans laid the major foundations of American federalism.

The division of powers between National and State Governments has many specifications, some provided by the Constitution and some by tradition or statutes. The supremacy of the National Government, combined with the balancing effect of the States' powers, distinguishes American federalism from other governmental systems in other countries and provides the basis for our united country.

National supremacy was first established in 1819 in the case of *Maryland* v. *McCulloch,* when the Justices concluded that "the Government of the Union, though limited in its powers, is supreme within its sphere of action." Consequently, no State had any power to "retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress."

Although many people feel that the federalistic principle of national supremacy gives too much power to a centralized source, it must be remembered that the National Government actually only has certain powers. The National Government possesses only those powers delegated to it by the Constitution.

Certain powers are also denied to the Federal Government, however. Some are stated, such as granting a title of nobility or levying a duty on exports. Other powers, such as the power to create public schools or enact national marriage laws, are denied to the National Government only because the Constitution is silent on the matter. The other powers denied to the National Government are those which would threaten the existence of the Federal system. They cannot, for instance, tax the government functions of the States, for it is then possible that one of the States could be taxed out of existence.

The Constitution reserves to the States those powers that are not granted to the National Government nor denied to the States through the 10th amendment, although some powers are expressly denied to the States. Some powers that are expressly denied to the States are: they may not enter into any treaty or alliance, coin or print money. Their powers include the powers to lay and collect taxes, define and punish crimes, and condemn property for public use.

What, then, is the purpose for such specific instructions for National and State governments? Why did the framers of the Constitution provide such detailed specifications? The most crucial concept of federalism is that National and State governments are brought to work together for the best interests of all people. This is the most important application of federalism.

In conclusion, therefore, by pinpointing the exact location of authority and power, the U.S. Constitution through federalism permits centralized action and national strength, distinguishing the American democracy from the governmental organization of all other countries. Federalism permits action where it is most needed. Federalism permits joint enterprise and cooperation. Federalism brings about a greater national unity. Federalism provides specific authority to National and State governments. Finally, federalism,

by restricting the powers of the central Government, protects the American people against the tyranny that our ancestors fled when they left their original homeland. By securing all rights of independent sovereignty to each State, and yet providing for the interest and safety of all, federalism has become the most important concept in American governmental organization today.

Thank you.

[The prepared statement of Ms. Bandes follows:]

PREPARED STATEMENT OF NANCI JEAN BANDES

" . . . An indestructible Union, composed of indestructible States."[1] As given by the Supreme Court justices in the case of Texas v. White, 1869, this definition represents the true essence of American federalism itself. Federalism has had the most impact on our democracy in the United States, and is the most important concept of American governmental organization today.

" . . . American federalism is a form of political organization in which the exercise of power is divided between two levels of government, each having the same citizen body."[2] These powers of government are divided on a constitutional basis, and are divided between a central or national government and regional units or states. Both governments have authority, though limited, to act in ways which directly affect the people of the governed area.

Federalism is unique in that it permits local action in areas of local concern, yet also provides for the strength and power that come from a union of separate entities. New Jersey, for example, gives bus transportation to private as well as public school students, while other states may not. Other examples are Nebraska's unique unicameral legislature, and Nevada's legalized gambling.[3]

While permitting variance in local concerns, federalism also, however, provides unity and strength in national concerns, such as a natural disaster or a crisis in a particular state, when all the resources of the entire country are available for any necessary aid. A primary principle of American federalism is that "the national government would use its superior resources to initiate and support national programs principally administered by the states and localities."[4] The sharing that occurs between national and state governments has a great effect on the lives of every American citizen.

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[1]William A. McClenaghan, Magruder's American Government (Boston, Allyn and Bacon, 1973), p. 534.

[2]C. Herman Pritchett, The American Constitution (New York, McGraw-Hill Book Company, Inc., 1959), p. 63.

[3]McClenaghan, p. 60.

[4]Morton Grodzins, The American System (Chicago, Rand-McNally and Co., 1980), p. 17.

It is important to note that the division of power by the Founding Fathers was based on the needs of the times rather than a preconceived formula, although some members of the Constitutional Convention knew of other federal systems in ancient Greece and Switzerland and were familiar with the theoretical literature about such systems.[5] Since that time, there have come to be certain principles common to all federal systems, as well as an important part of government in the United States.

1. The federal relationship must be established or confirmed through a written covenant that outlines the terms by which power is shared.
2. Power is diffused into many substantially self-sustaining powers in noncentralization.
3. Territorial democracy is present to ensure equal representation of various groups and interests, and to secure representation of diverse groups.[6]

Later, the new states to be admitted to the Union were even less interested in the legal or theoretical aspects of federalism as they were in its utility: "cooperation, joint enterprise, and partnership in building a prosperous nation."[7] The effects of the practical uses of federalism, past and present, in fact, are felt in every aspect of our national activity.

Like all governments, that of the United States began of necessity. The social, economic, and political problems of the 1780s proved the need for a stronger central government than that of the weak Congress under the Articles of Confederation.[8] Subject to many strong limitations on its powers, Congress could enforce no decision, and in many matters, including amendment, the consent of every state was required. Furthermore, before the states combined, the charters of the colonies defining the modes of their governments were radically different. In both war and peace, the people of the young nation could neither conduct their own affairs nor foreign relations. It was federalism that was needed to bring the country together in unity and strength.

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[5]William H. Young, Ogg and Ray's Introduction to American Government (New York, Meredith Publishing Company, 1966), p. 50.

[6]"Federalism," Encyclopaedia Britannica (1978 ed.), vol. 7, p. 205.

[7]Marian Irish and James Prothro, The Politics of American Democracy (Englewood Cliffs, N.J., Prentice-Hall, Inc., 1965), p. 129.

[8]McClenaghan, p. 51.

Before the Constitutional Convention even met, it was known there would be a strong move towards federalism and the weakening of the states. In strong support of federalism, John Adams wrote in March, 1776, "Each colony should establish its own government and then a league should be formed between them all."[9] A collection of essays known as "The Federalist," was written and prepared by Alexander Hamilton, James Madison, and John Jay to persuade the New York convention to ratify the Constitution, with its federalistic principles.[10] On the other hand, however, anti-federalists Robert Yates and John Lansing felt that the "consolidation" invaded "the individual states in their uncontrolled constitutional rights" and was not feasible for so extensive a country.[11]

In initiating a federal system of government, the Americans had the advantage of working with a modern society with no traditional hierarchies and being relatively isolated from the king and his power. The three major difficulties they did encounter in unifying the states, however, were: 1) uniting a traditionally hierarchial society with equality and sharing of power; 2) dissolving the conflict between local autonomy and the need for a strong central government; and 3) resolving the problem of executive leadership and succession, which was not solved until the initiation of the elected presidency.[12] By solving these problems, the Americans laid the major foundations of American federalism.

The division of powers between national and state governments has many specifications, some provided by the Constitution and some by tradition or statutes. The question was originally raised as to the purpose of the federal government. On one side, the new federal government was paramount, and the states were simply subordinate political units. On the other hand, some felt that the central government was erected only to aid the states when

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[9]Bernard Schwartz, The Reins of Power (New York, Hill and Wang, 1963), p. 21.

[10]Broadus Mitchell and Louise Mitchell, A Biography of the Constitution of the United States (New York, Oxford University Press, 1964), p. 125.

[11]Ibid., p. 170.

[12]Encyclopaedia Britannica, vol. 7, p. 205.

they felt the need for it.[13] It is the former which has been upheld time and time again, however, and the supremacy of the national government, combined with the balancing effect of the states' powers, is that which distinguishes American federalism from other governmental systems in other countries and provides the basis for a united country.

National supremacy was first established in 1819 in the case of Maryland v. McCulloch, when the Bank of the United States, a federal bank, refused to pay Maryland state taxes. The justices concluded that " . . . the government of the Union, though limited in its powers, is supreme within its sphere of action."[14] Consequently, no state had any power to "retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress."[15] Secondly, no form of state law may conflict with any form of national law. When Oregon entered the Union in 1859, for example, its Constitution prohibited voting by any person of Chinese descent. When the Fifteenth Amendment was added in 1870, however, the provision in the Oregon Constitution ceased to be effective.[16] Although many people feel that the federalistic principle of national supremacy gives too much power to a centralized source, it must be remembered that the national government actually has only certain powers.

The national government possesses only those powers delegated to it by the Constitution. There are three types of delegated powers: expressed, implied, and inherent. The expressed powers are those that are provided in so many words. Most are found in Article I, Section 8 of the Constitution, and include the powers to lay and collect taxes; to declare war; to make treaties, and to raise and maintain armed forces.[17] Secondly, the implied powers are not stated but may be reasonably implied from those which are. The "elastic clause" of the Constitution, found in Article I,

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[13]Charles Leedham, Our Changing Constitution (New York, Dodd, Mead, and Company, 1964), p. 50.

[14]Pritchett, p. 65.

[15]Ibid., p. 65.

[16]McClenaghan, p. 66.

[17]McClenaghan, p. 61.

Section 8, Clause 18, gives Congress the authority to " . . . make all laws which shall be necessary and proper . . ."[18] Lastly, the inherent powers are those which belong to the national government by virtue of its existence as the national government. They include the powers to regulate immigration; to acquire territory; and to protect the nation against internal subversion.[19] The powers which may be exercised only by the national government are known as exclusive powers.

Certain powers are also denied to the federal government. Some are stated, such as granting a title of nobility or levying a duty on exports. Other powers, such as the power to create public schools or enact national marriage laws, are denied to the national government only because of the Constitution's silence on the matter. The other powers denied to the national government are those which would threaten the existence of the federal system. They cannot, for instance, tax the government functions of the states, for it is then possible that one of the states could be taxed out of existence.[20]

The Constitution reserves to the states those powers that are not granted to the national government nor denied to the states through the Tenth Amendment. The states have the power to do anything which the Constitution does not specifically prohibit and which the national government has not been granted. The Tenth Amendment provides that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."[21] Evidence indicates that the framers of the Constitution merely intended to reaffirm the principle of federalism that was implied in the original Constitution: the national government has delegated powers and the states have reserved powers.[22]

Some powers are expressly denied to the states: states may not

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[18]Wallace S. Sayre, American Government (New York, Barnes and Noble, Inc., 1964), p. 224.

[19]McClenaghan, p. 63.

[20]McClenaghan, p. 63.

[21]Irish and Prothro, p. 116.

[22]Ibid., p. 116.

enter into any treaty or alliance, or coin or print money, for example.[23] Some powers are also denied the states because of the existence of the national government or because the individual state Constitution contains denial of power to the state. Finally, the concurrent powers are those which belong to both the national government and the states. These powers include the authority to lay and collect taxes, define and punish crimes, and condemn property for public use.[24]

What, then, is the purpose of such specific instructions for national and state governments? Why did the framers of the Constitution provide such detailed specifications? The most crucial concept of federalism is that national and state governments are brought to work together for the best interests of all people. This is the most important application of federalism. The best example, however, lies in the amendment process, in that it best demonstrates the federalistic nature of our government, with proposal being a national function and ratification a state matter.[25]

In conclusion, therefore, by pinpointing the exact location of authority and power, the United States Constitution through federalism permits centralized action and national strength, distinguishing the American democracy from the governmental organization of all other countries. Federalism permits action where it is most needed. Federalism permits joint enterprise and cooperation. Federalism brings about a greater national unity. Federalism provides specific authority to national and state governments. Finally, federalism, by restricting the powers of the central government, protects the American people against the tyranny that our ancestors fled when they left their original homeland. By securing all rights of independent sovereignty to each state, and yet providing for the interests and safety of all, federalism has become the most important concept in American governmental organization.

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[23]McClenaghan, p. 65.

[24]McClenaghan, p. 66.

[25]Ibid., p. 57.

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Senator HATCH. Well, thank you. That is an excellent essay. I have been really impressed with the quality of the three essays, thus far. I can say that there has been very little overlap as far as the bibliographies are concerned. Each of you has gone to different sources to come up with what really seem to be excellent conclusions to me, as chairman of this committee.

You have studied the principle of federalism extensively. Your essay, I think, excellently presented the worth of this particular principle. In your mind, what can be done to strengthen federalism? How can we assure that the National Government respects the State governments and vice versa?

Miss BANDES. Well, I think it is very important for everybody in Congress and all forms of Government to realize what federalism is and what impact it has on all kinds of our Government.

I have a quote from President Reagan, his inaugural speech, where he said: "It is my intention to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States and to the people."

I think it is important that all people realize that there is a distinction between the two powers.

Senator HATCH. I think that is terrific. Well, we are happy to have had you here. I hope you enjoy the whole experience, and have a good day today.

Miss BANDES. Thank you very much.

Senator HATCH. Thank you for testifying.

Our final witness today is the winner from the State of Vermont, Shaun Kevin Kirby. We are very happy to welcome you, Shaun, to this very important hearing before the Constitution Subcommittee.

Shaun attends Essex Junction High School, where he is a senior. His educational interests are in math and science. Senator Leahy mentioned to me that it is very gratifying to have a student testify whose main interests lie beyond those in government and politics, but who nevertheless recognizes the importance of our Constitution. I might add that Senator Leahy expresses regrets that a last-minute event has called him away from this hearing. But he does want me to convey his high regards to you, Shaun, for the excellent essay you have prepared on the principle of federalism with regard to the Constitution.

So welcome to the committee. We look forward to taking your testimony at this time.

STATEMENT OF SHAUN KEVIN KIRBY, ESSEX JUNCTION, VT

Mr. KIRBY. Thank you, Senator Hatch.

The title of my essay is "The Ingenious Separation of Powers Under the U.S. Constitution."

Our Founding Fathers made the arduous, 3,000-mile voyage across the Atlantic Ocean in search of freedom and a better way of life. Some sought expansion of trade, others freedom of religion or land ownership. Most importantly, the desire for self-government as opposed to the restraining European monarchy drove the explorers of the 17th century to flee their native lands.

Our courageous forefathers, such as William Penn, Lord Baltimore, and others founded the 13 American colonies, and their descendants won our freedom on the battlefields of the American Revolution.

As an independent nation in the eyes of a world hungry for conquest, we needed a strong National Government to bind us together as one people and protect us from invasion.

The Articles of Confederation, our first plan of National Government, proposed a loose conglomeration of States which retained sovereignty. This plan of Government failed due to its lack of Federal authority. It did not provide for a Chief Executive nor a judicial body. Moreover, it lacked the power to tax the citizens.

In May 1787, our Nation's most sage and seasoned politicians gathered at Independence Hall to revise the articles. Behind closed doors and drawn blinds, they secretly rejected them and began discussing the plan of Government which they later drafted into the U.S. Constitution. The Founding Fathers envisioned a democracy—a government of the people, by the people, and for the people. Remembering the inappropriate balance of power in their European governments, where monarchs held great sovereignty, they sought to establish a strong central leader whose authority would be checked and kept in control. The Constitution which they drafted establishes a Chief Executive, head of the executive branch of Government, and two other branches to check his power—the legislative branch and the judicial branch.

These three branches of Government harmonize and provide the centralization of Government which our newly freed colonies desperately needed, but lacked under the Articles of Confederation.

Our forefathers endowed each branch with specific Federal powers and rights so that no single branch could ever assume total

control of our Nation. Nevertheless, the Federal Government remains strong. For nearly 200 years, this master plan of Government has withstood the violent upheavals of changing times and society. Only the appropriate separation of powers and the elaborate system of checks and balances in our Constitution makes this possible.

Article I, section 1, of our Constitution states that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and the House of Representatives." This clause establishes a bicameral legislature with the sole power to make laws—the legislative branch. It does not, however, grant the legislative branch supreme power to legislate. The President, for example, may make an executive agreement with a foreign country, which has the impact of a law. Theodore Roosevelt, the great progressive President of the early 20th century, greatly expanded the Presidential power in this respect when he used the executive agreement in place of a treaty. In addition, treaties made "under the authority of the United States"—article VI, section 2—have the force of laws.

Likewise, when the Supreme Court hands down a decision, it sets a precedent which serves to guide further decisions. In this respect, a precedent is similar to a law.

The greatest check on the lawmaking power of the legislative branch is vested in the Chief Executive himself. He must sign all legislation before it becomes law. He may veto a bill which he feels unfit for our Nation, but the Congress may override his veto by a two-thirds vote. Thus, the lawmaking power of the legislative branch remains strong and effective, but not absolute nor overbearing. This unique interrelation between the three branches of Government and the separation of legislative power serve to balance our Federal Government.

In addition to legislative supremacy, the legislative branch possesses the enumerated and implied powers which give it national authority the Articles of Confederation lacked.

Article I, section 8, of our Constitution grants it the power to levy and collect taxes, borrow money, coin money, and regulate a currency system. These powers give our Federal Government the efficiency it needs to achieve financial stability for our Nation and economic competition in foreign markets. The legislative branch may also punish counterfeiters and piracy, but this power is checked by the Supreme Court, since it has the final decision in all Federal suits. The legislative branch may also provide for an Army and a Navy, of which the President of the United States is Commander in Chief. The legislative branch retains the final authority in the declaration of war. This balance and counterbalance of power works efficiently to prevent any one branch from assuming total power to direct our Armed Forces.

As an overseer of the States, the legislative branch has the power to issue patents and copyrights, regulate foreign and interstate commerce, and establish uniform rules of naturalization and bankruptcies. This "policing" of the States binds our Nation as a whole, since it precludes the States from following their own political whims and diverging from one another.

The most important power granted to the legislative branch, the "elastic clause" of article I, section 8, paragraph 18, is the power "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Although the Supreme Court may attempt to declare an act of Congress unconstitutional, Congress may use this clause to support its stand in many cases by arguing that its actions were necessary and proper to the functioning of our Government.

Indeed, the powers granted to the legislative branch and the Constitution give it strength, and yet it remains effectively checked by the executive and judicial branches.

The executive branch of Government consists of the President and his Cabinet and associates. The President retains the greatest power of any Government official, but our founding fathers prevented him and his office from becoming a monarchy by subjecting the President and the executive branch of Government to many restraints under the legislative branch.

Article II, section 2, states that "He shall have the power, by and with the Advice and consent of the Senate, to make treaties * * * appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court and all other officers of the United States." This gives the President great opportunity to supervise the execution of legislation, which the Constitution enumerates as his chief duty.

Also, working with the men he knows and likes best, he can perform his duties more efficiently. He does by no means, due to the checks and balances of article II, maintain absolute power. He may enter into foreign treaties only when two-thirds of the Senators concur. Likewise, he may ask the opinion of his chief advisers in a decision. Although Congress limits his power to legislate, he delivers his annual State of the Union Address to the Senate and House of Representatives, thus greatly influencing their legislative decisions.

The office of the President greatly strengthens the Federal Government and provides the centralization necessary to fortify our Nation against threats to our independence. Thus, we see the careful planning and separation of powers between the executive and legislative branches of Government.

The judicial branch ensures that the legislative and executive branches adhere to the principles of our Constitution, which our forefathers so precisely constructed. Article III, section 1, states that "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time establish." Article IV, section 2, grants the Supreme Court jurisdiction over cases involving the Constitution and laws of Congress. With this power, the Supreme Court can declare acts of Congress unconstitutional. This greatly strengthens the judicial branch of Government and prevents our legislative branch from exercising too much power.

The judicial branch may also settle disputes involving "admiralty and maritime jurisdiction" and controversies involving States, citizens, and foreign parties. This supplies the Federal Government with the sovereignty over States it needs and balances the legislative branch's powers to regulate interstate commerce.

Although powerful itself, the Supreme Court is limited by the legislative and executive branches. The President must appoint the Supreme Court Justices. With this advantage, he has more power over their decisions. If Congress does not favor a Supreme Court decision declaring a law unconstitutional, it can propose an amendment—under article V—to the Constitution which would allow the law. Congress may also impeach and try members of the Supreme Court. In this way, Congress balances the Presidential power of appointment.

In addition, article III, section 2, states that Congress may "regulate" the appellate jurisdiction of the Supreme Court. This clause, although severely diminishing the Supreme Court's power, has been seldom employed. Thus, the Supreme Court exercises a powerful check on the legislative and executive branches, while remaining sufficiently restrained by them at the same time.

As we have seen, our forefathers erected a network of interlocking powers in the U.S. Constitution. In many cases, one branch of Government has the power to overrule an action of another branch. In some cases, this "overruling" itself may be overruled. Similarly, various powers granted to one branch are balanced by like powers granted to another branch.

The system of checks and balances provides the key to the prosperity of our National Government.

Why has our constitutional Government endured conflict and crisis both foreign and domestic? Why are we, as Americans, the freest and yet the most responsible, coherent people in the entire world? What makes the United States a supreme world leader?

Our Constitution provides us with the Government we need—a strong, central government with the proper limitations so that the people maintain an active voice in politics. Only because of this may we justly term our Government a democracy. We may rest assured that no one branch of government will assume the stifling power of the European monarchs under which the Founding Fathers suffered.

We have a unique and ingenious separation of power in our Federal Government—that is what gives our Nation its enduring prosperity and influence on the world. We are truly "One Nation, under God, indivisible, with liberty and justice for all."

Thank you.

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Senator HATCH. That was terrific, Shaun.

I have to say that I think our respective States represented here today just have to be very, very proud of these young people who have testified. You have been terrific.

Let me ask you one question. Education, you know, has been a subject of considerable debate over the last number of years. President Reagan has made it one of the forefront debates in this coun-

try. It strikes me that some knowledge of the Constitution and how it works is indispensable to responsible citizenship.

What advice would you give to the educational leaders in this country as to how we might be able to educate the average American high school student about the Constitution, or do you think that it is being brought home in responsible ways at this time?

Mr. KIRBY. Well, in my high school in Vermont, I am very pleased that the courses taught there in government and economy do bring across a clearcut and crisp perception of the U.S. Constitution, but they also encourage the student to seek his own beliefs and to develop his own attitudes concerning our Nation's government. I think that that is one of the most important things in any good education, to teach the students to think for themselves, so that they can interpret the Constitution, and someday when they become our Nation's leaders and they have to deal with the issues that face us, they will be able to reason soundly and come up with ideas that will help to guide our Nation to a prosperous future.

Senator HATCH. In addition to being chairman of the Constitution Subcommittee, I am also chairman of the Labor and Human Resources Committee, which overviews all the Federal education programs, and I am the author of the Math and Science bill, that you undoubtedly have to be interested in, since you like math and science.

What advice would you give to me as chairman of both of these committees as to how we might bring home the Constitution to more people in our country today?

Mr. KIRBY. Well, I think that the people of the United States need a greater awareness of their heritage, which is very important. As I pointed out in the beginning of my essay, our forefathers struggled very hard to establish an entirely new society on this continent. They hewed a civilization out of a wilderness, so to speak, in the United States. They did this because they sought freedom—freedom of government, religion, and freedom to make their own decisions. I think that if our American people are made to understand that that is why they exist here and how we have struggled in the past for our freedom, perhaps they will develop more appreciation for our Constitution which will lead them to a curiosity to explore and discover more about it for themselves.

Senator HATCH. Well, thank you so much. I just have to say that this country is going to be in pretty good shape if you four who have testified here today are typical of our young people throughout this country, and I suspect that you are, although each of you has reached transcendent heights of education and knowledge and understanding.

But, Sloane, Karen, Nanci, and Shaun, I just want to personally express my appreciation for the testimony that you have brought here today. It has been really terrific, and each one of you has added to this committee's understanding of these very important principles. I think it just reinforces my belief that this particular approach and program is a very, very worthwhile one. You will find that there will be millions of people who will read in the Congressional Record the essays that you have taken so much time to write, and that you have competed with, and now have been recog-

nized by the representatives from your States, and of course, representatives now from the Federal Government.

So I want to thank each of you for being here, and with that, we will recess these hearings and this committee until further notice.

Thank you all for coming, and we appreciate your support of the Constitution of the United States.

[Whereupon, at 11:05 a.m., the subcommittee was adjourned.]